

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-515-W - ORDER NO. 2013-57

FEBRUARY 12, 2013

IN RE: Application of Utilities Services of South)	ORDER DISALLOWING
Carolina, Incorporated for Approval of a)	EXTENSION OF TIME
Water Supply Agreement with York County,)	AND APPROVING
South Carolina)	WATER SUPPLY
)	AGREEMENT

The above-captioned matter is before the Public Service Commission of South Carolina ("Commission") on the Application of Utilities Services of South Carolina, Inc. ("USSC" or "Company") for review and approval of the Water Supply Agreement between USSC and York County.

I. INTRODUCTION

USSC is a public utility authorized to operate water and wastewater systems under the jurisdiction of the Commission in York County and elsewhere in the State of South Carolina. Most recently, the Commission approved a schedule of rates and charges for USSC's service in Commission Order No. 2013-77, issued February 12, 2013, in Docket No. 2007-286-WS.

USSC and York County have negotiated an agreement whereby York County will provide potable water service to USSC at a point at or near the Foxwood Subdivision for distribution to USSC's customers. This agreement is attached hereto as Order Exhibit No. 1. The proposed interconnection is estimated to cost \$150,000, which includes \$28,764 in water connection fees as per York County's current water and sewer fee schedule.

This amount reflects USSC's portion of the cost to interconnect. USSC seeks the Commission's order to provide authorization to record these costs as utility plant in service additions, subject to review and audit by the ORS in the Company's next rate proceeding.

Pursuant to the terms of the contract, York County will provide potable water service to USSC at a rate of \$3.26 per thousand gallons with a base charge of \$332.81 per month for water service through a four-inch master meter. York County will not bill USSC for water used for flushing USSC's distribution system or for any other non-metered water use, as the Foxwood customers will be billed only for the cost of water actually used at their premise. If approved, a Foxwood customer using 6,000 gallons of water per month would see his bill increase by approximately \$6.13 per month. The change in water supply is necessitated by the deteriorating groundwater quality of the current source, which is highly mineralized with significant amounts of iron, calcium, sulfur and manganese, the presence of volatile organic compounds (perchloroethylene and trichloroethylene), and the fact that the system is not sufficient for the provision of consistent water service to Foxwood customers. The 15,000-gallon elevated water storage tank installed with the original development is undersized to meet the demand of the Foxwood customer base, was bought used in 1971, installed in 1973, and is near the end of its useful service life. The elevated tank cannot be taken out of service without negatively affecting the provision of water service, and the capital cost to replace the tank is on the order of \$500,000. While USSC owns two wells, Wells 1 and 2, and Wikoff Color Corporation owns three wells, Wells 3, 4, and 5, only two of the five wells are in

operation, Wells 4 and 5. Unfortunately, Wells 4 and 5 are limited in output because of the size of the wells and the limited capacity of the aquifer to produce water from those wells. Furthermore, Wikoff Color Corporation has the option to shut down Wells 4 and 5 with 12 months prior notice to USSC.

By letter dated December 30, 2011, the Commission's Clerk's Office instructed USSC to publish a prepared Notice of Filing, one time, in newspapers of general circulation in the area affected by USSC's Application. The Notice of Filing described the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings as a party of record. The Commission also instructed USSC to notify directly, by U.S. Mail, each customer affected by the Application by mailing each customer a copy of the Notice of Filing. A revised Notice of Filing was issued on January 5, 2012. On January 30, 2012, USSC filed an Affidavit of Publication demonstrating that the Notice of Filing had been duly published and provided a letter certifying that it had complied with the instructions of the Commission's Clerk's Office and mailed a copy of the Notice of Filing to all customers. On February 1, 2012, petitions to intervene were filed by John Zick, James Earnheart, Patricia Sopata, Terry Kukral, Walter Wise, Linda Faile, Mark Paterno, Frank Coviello, James S. Knowlton, and Chantay F. Boulter.

At the request of the Company and pursuant to Commission Order No. 2012-119, a status conference was held on March 27, 2012. In response to a request for a local

hearing, the Commission issued Order No. 2012-118,¹ authorizing and providing for notice for a public night hearing. On March 20, 2012, the Company provided an affidavit certifying that it had provided notice to its customers via U.S. Mail of the date, time, and location of the local public hearing. On April 3, 2012, the Commission held the night hearing at the First Baptist Church of Fort Mill, 121 Monroe White Street, Fort Mill, South Carolina.

Thereafter the Commission, with Chairman Wright presiding, heard the matter of USSC's Application beginning at 10:30 am on August 14, 2012, at the Commission Hearing Room located at 101 Executive Center Drive in Columbia, South Carolina. USSC was represented by Scott Elliott, Esquire. ORS was represented by Nanette S. Edwards, Esquire. Intervenors Faile and Boulter appeared *pro se*. The other Intervenors did not appear at the merits hearing.

Pre-filed direct and rebuttal testimony was submitted by the Company witness, Patrick C. Flynn, Regional Director at Utilities, Inc. ORS witness, Willie J. Morgan, Program Manager for the Water and Wastewater Department, submitted pre-filed direct testimony. Intervenors Chantay F. Boulter, Linda Faile, and Jim Knowlton also submitted pre-filed direct testimony; however, Mr. Knowlton did not appear at the merits hearing held on August 14th.²

¹ The purpose of the night hearing was to provide a forum, at a convenient time and location, for customers of USSC to present their comments regarding the Application.

² No party objected to Commissioner Howard participating in the hearing held on August 14, 2012, although he was unable to attend the April 3, 2012 night hearing.

II. DISCUSSION

At the hearing, Company witness Flynn testified that if the Commission approves the interconnection with York County, USSC will have a water source that meets all current water quality limits free of the minerals, calcium hardness, and volatile organic compounds present in the aquifer and at an ample water volume, even during peak demand periods. During cross-examination by Ms. Bouler, Mr. Flynn acknowledged that, while the contract with York County allows USSC to rely on any available wells, it is USSC's position, based on fifteen or more years of experience, that York County's service is reliable and has a stable rate structure. After reviewing all available options, the Company asserts that interconnection with York County is the most efficient means of providing reliable water service to its customers.

Ms. Bouler testified that she has several concerns regarding the Company's request. Specifically, she questioned how the Company would service Foxwood customers with its wells in the event that York County had an outage. She requested that the Company provide a concession for those customers who installed water infiltration systems; she asked that the Company refrain from seeking a rate increase for five (5) years; and she also asked that the costs associated with the interconnection be recouped from the entire USSC customer base. Additionally, she expressed concerns regarding the estimated cost to interconnect and whether that estimate could change. Finally, she expressed concern that the Company would not be held to its commitment to assess customers the York County bulk water charge based on usage from the customer's meter and not the master meter.

Ms. Faile testified that she is opposed to the interconnection on the basis that she does not trust the reasons provided by the Company for the interconnection, but she acknowledged that, in general, York County would provide better water service to the community.

ORS witness Morgan testified that USSC's proposed interconnection will eliminate many of the water quality, aesthetics, and low pressure concerns. The interconnection to York County will allow USSC to remove the elevated storage tank and disconnect the existing wells. These changes will allow USSC to provide its customers with adequate water supply that consistently meets all primary and secondary regulatory standards. He testified that ORS has received many types of complaints from customers in the Foxwood community during the preceeding 12 months such as brown water, air in the water lines, water outages, and low pressure. He also noted that customers experienced difficulty contacting USSC to report the outages. While ORS recommends that the Commission approve the interconnection with York County so as to improve water service to Foxwood customers, ORS witness Morgan also provided the following recommendations to ensure a positive transition:

- i. The initial start read under the purchased water rate structure should not begin until after the water distribution system has been flushed and the supply is meeting secondary standards.
- ii. Prior to the interconnection, USSC should provide information to all Foxwood customers which detail the specific date of the

interconnection, scheduled water system flushing dates, and tips for managing their residential plumbing at a higher pressure.

iii. USSC should make its staff available on-site for at least three (3) days following the interconnection to assist customers with adjusting to the new water supply source. The availability time should extend to 7:00 p.m. each day.

iv. After interconnection, each water meter should be visually inspected by USSC to determine if the customer is experiencing a leak due to the increase in pressure.

v. If there appears to be a leak on the customer side of the meter, USSC should inform the customer of the leak and offer to cut-off the water supply at the customer meter so that customer can make a repair.

vi. If there appears to be a leak on the customer side of the meter and USSC is unable to communicate directly with the customer, a door hanger should be used to inform the customer of the leak.

Regarding the costs associated with interconnection, ORS witness Morgan testified that, since Wikoff Color Corp. will no longer be a water customer of USSC, any costs associated with interconnecting Wikoff Color Corporation to York County should not be included in USSC's next rate case. (*See*, Hearing Exhibit 2)

Subsequent to the merits hearing at the Commission, requests to delay a decision on this matter were filed, so that the Foxwood residents could consider alternative water suppliers. USSC opposed any delay. Although this Commission was willing to allow

some time for this endeavor, no such alternative suppliers have been proposed to this Commission, even though a reasonable amount of time has passed. A review of the milestone dates in this proceeding supports this point. After the hearing, but prior to this Order, the Foxwood residents have continued to be served from wells that are unreliable in terms of operation and water quality. This Commission believes that the longer the Commission delays its ruling on this matter, the longer the residents of Foxwood will be subject to unreliable water service and water of poor quality. Therefore, we are not willing to allow more time for consideration of alternative water suppliers, and we are proceeding to rule on the merits of the proposed Water Supply Agreement between USSC and York County in this Order.

III. FINDINGS AND CONCLUSIONS

1. Although a reasonable amount of time has passed since the merits hearing on this case, no alternative water suppliers have been proposed to this Commission. Further extensions of time to consider alternative water suppliers should therefore not be approved, and we believe that the public interest requires this Commission to proceed to rule on the merits of the Water Supply Agreement between USSC and York County.

2. USSC is a public utility authorized to operate water and wastewater systems under the jurisdiction of the Commission in York County and elsewhere in the State of South Carolina.

3. We find, based on the evidence and testimony in this case, that the current water source is inadequate. Only two of the five wells are in operation, Wells 4 and 5, which are owned by Wikoff Color Corporation. Wikoff Color Corporation has the option

to shut down Wells 4 and 5 with 12 months prior notice to USSC. Also, the elevated water storage tank is near the end of its useful service life, and would be costly to replace. Furthermore, the current water source is deteriorating and is highly mineralized with significant amounts of iron, calcium, sulfur and manganese, and volatile organic compounds (perchloroethylene and trichloroethylene) have been detected.

4. We find, based on the evidence and testimony in this case, that allowing interconnection with York County is the most cost efficient means of ensuring that Foxwood customers have adequate and reliable water service, and there appears to be general agreement among the parties that interconnection to York County will result in improved water quality.

5. We find that the Company's request for approval to interconnect with York County for water supply service to the Foxwood subdivision should be granted subject to the conditions set forth in this Order. The bulk water rate to be adopted by us is \$3.26 per thousand gallons, with a base charge of \$332.81 per month.

6. For future changes in the bulk water rate, the Company is required to follow the procedures set forth by Order No. 2002-285 (April 18, 2002) in Docket No. 2001-164-W/S for increases in the amount of purchased bulk water pass-through charges. These procedures obligate the Company to furnish the Commission with proof of the basis for the adjustment and billing method at least sixty (60) days prior to the proposed billing date. In addition, the procedures also obligate the Company to furnish customers with thirty (30) days prior written notice of a purchased water adjustment, which advises them of the basis for the billing adjustment and its effective date.

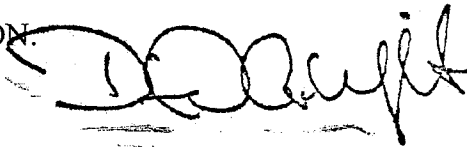
IT IS THEREFORE ORDERED THAT:

1. Further time to consider alternative water suppliers is disallowed.
2. We grant the Company's request to interconnect with York County based on the testimony and evidence in the record that the Foxwood customers will receive better water service than is available from the existing water supply subject to the conditions set forth in this Order.
3. We adopt the recommendations put forward by ORS to ensure a smooth transition for the Foxwood customers, and so order them to be implemented.
4. USSC shall provide thirty (30) days' notice to its customers before switching customers to a different rate.
5. We approve a bulk water billed rate of \$3.26 per thousand gallons with a base charge of \$332.81 per month. Any changes to this rate schedule shall be approved in a manner consistent with the procedure outlined in Finding and Conclusion No. 6 above and Order No. 2002-285.
6. Foxwood customers shall be billed only for the cost of water measured at the customer meter.
7. The water supply agreement with York County (Order Exhibit No. 1) is hereby approved and is incorporated into and made part of this Order by reference.
8. The Company may record the costs associated with the interconnection as utility plant in service additions subject to review and audit by ORS in the next rate proceeding.

9. Any costs associated with interconnecting Wikoff Color Corporation to York County shall not be included in USSC's next rate case.

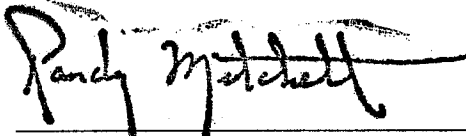
10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION.

A handwritten signature in black ink, appearing to read "David A. Wright", written over a horizontal line.

David A. Wright, Chairman

ATTEST:

A handwritten signature in black ink, appearing to read "Randy Mitchell", written over a horizontal line.

Randy Mitchell, Vice Chairman

(SEAL)

EXHIBIT A

WATER SUPPLY AGREEMENT

UTILITIES SERVICES OF SOUTH CAROLINA, INC. and YORK COUNTY, SOUTH CAROLINA

THIS AGREEMENT, made and entered into on this 21ST day of NOVEMBER, 2011, by and between Utilities Services of South Carolina, Inc., a South Carolina corporation, (hereinafter referred to as "Utility") and York County, a political subdivision of the State of South Carolina, (hereinafter referred to as "County").

WITNESSETH

WHEREAS, Utility is engaged in the business of furnishing water service to the public area located in York County, South Carolina, known as the Foxwood Subdivision (hereinafter referred to as the "Water Service Area" and more fully described as the area indicated on the attached map referenced as Exhibit 1; and

WHEREAS, the Utility desires to obtain, and the County desires to provide water supply service for the Utility's existing customers within the Water Service Area, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises which shall be deemed an integral part of this Agreement and of the mutual covenants as hereinafter set forth the parties hereto agree as follows:

SECTION 1

PURPOSE

It is the purpose and intent of this Agreement to provide for retail water service by Utility, utilizing the County's water supply, to existing homes and structures within the Water Service Area shown in Exhibit 1. All terms and conditions contained herein shall be read and interpreted in a manner consistent with and in furtherance of the purpose and intent.

SECTION 2

WATER SUPPLY SERVICE

1. The County shall provide wholesale water supply service to the Utility under the terms and conditions contained in this Agreement. Such service shall be provided through an extension of the County's water main and interconnection with the Utility's water distribution system. Utility agrees to design, permit and construct the extension of County's water main and make the required connection to Utility's distribution system infrastructure at its sole cost and expense. Utility shall install a County approved meter vault and meter at that location. Utility will extend its existing water line to connect to such meter. Utility shall be responsible for the protection of the County's water system through the installation of a Double Check Valve Backflow Preventer and protection of their customer's services through the installation of a Pressure Reducing Valve (if necessary). All Utility construction work shall meet all applicable regulatory standards. The County will deliver water service to Utility with adequate pressure and quantity at the point of connection to serve Utility customers in the Water Service Area.

2. The County shall use its best efforts to provide the necessary water supply capacity needed by Utility to service its customers within the Water Service Area. Notwithstanding any other provisions contained herein, the County shall not be liable for any damages as the result of the inability or failure to provide water services pursuant to the Agreement either on a temporary, emergency, or permanent basis. Further, the County will be obligated to provide Utility water which meets or exceeds all state and federal health guidelines and standards.

3. Utility and County agree that the following method for billing Utility for water sold to Utility by County (hereinafter referred to as the "Billing Method") is acceptable to both parties.

The Billing Method: Utility shall make monthly payments to County based on the water usage registered on all Utility customers' meters within the Water Service Area. The County's initial charge to Utility for the water so metered will be equal to the lowest County wholesale water rate authorized by the York County Council for similarly situated customers in

York County for service rendered by the County where the billing is based upon wholesale customer meter readings. York County's present wholesale water rate is reflected in the County's Ordinance No. 5206, adopted on December 18, 2006, and is incorporated herein by reference. It is understood by both parties that the County is reviewing the present rate established by the County in the County's Ordinance No. 5206.

4. In the event that payment is not made to County by Utility within 30 days after each monthly Utility customer billing, Utility agrees to pay interest to the County at the rate of one and one-half percent (1 ½%) per month on the outstanding delinquent amount to the County after such 30 day period until said delinquent balance is paid in full.

5. In addition to the monthly water service usage rate, Utility agrees that any future customer within the Water Service Area whose lot is not contiguous to a water main which has been installed as of the date of this Agreement may be required to pay to the County a Water Impact Fee per the County's Ordinance Number 5206, passed on 12-18-06. The County agrees that there will be no County Water Impact Fee assessed to Utility's customers taking service from Utility the day County water service is initiated. The County also agrees that all lots within the Water Service Area on the day the County initiates water service to the Water Service Area, will be allowed to receive service without having to pay a County Impact or Tap Fee. Exhibit 2, attached hereto contains a description of all Utility owned water mains installed as of the date of this agreement.

6. Utility hereby agrees to collect County Water Impact Fees on behalf of the County as specified in Section 2, paragraph 5, herein, and shall remit the fees so collected to the County on a monthly basis. Utility will also collect its Commission-approved water connection fee from all new connections in the Water Service Area. Utility agrees that it will not connect any customer within the Utility's Water Service Area without first determining that such customer has paid (if appropriate) the County Water Impact Fee, in accordance with the terms of this Agreement.

SECTION 3

COMMISSION AUTHORIZATIONS

1. The parties acknowledge that this Agreement, the Billing Method, Utility's right to charge Utility's customers the initial County wholesale rate, and the Utility Water Distribution Charge, must be approved the South Carolina Public Service Commission (the "Commission").

2. Utility and County acknowledge that Utility will apply to the Commission for approval of the Water Distribution Charge; approval to charge Utility customers the County's initial wholesale Water Supply Charge, described herein; authorization to place such County charge on Utility customer's water bills as a separate line item; and the Commission determination that any future changes by County of County Water Supply Charge not be subject to Commission approval. It is understood and agreed by both parties to the Agreement that should the Commission fail to approve the items contained herein-above this Agreement may be immediately terminated by Utility and then neither party shall have any further obligation hereunder.

SECTION 4

EXCLUSIVE SUPPLY COMMITMENT AND EXCLUSIVE WATER SERVICE COMMITMENT

During the term of this Agreement, as long as County is able to meet Utility's water needs, Utility agrees to not utilize alternative water supply sources, including the Utility's existing water supply facilities, to service its customers within the Water Service Area. However, Utility may retain its existing supply facilities as a back up to be used in the event that the County cannot provide the necessary and sufficient water supply capacity to meet the service demand requirements of the Water Service Area. The County agrees not to provide water supply or service to any other entity or industry within the Water Service Area.

SECTION 5

GENERAL PROVISIONS

1. This Agreement shall be executed in two counterparts, each of which will be considered an original. This Agreement is binding upon the successors and assignees of the parties hereto. The provisions of this Agreement constitute the entire terms and provisions of this Agreement between the parties hereto, and no amendment or alteration shall be binding unless the party affected thereby shall have executed a written instrument amending the Agreement. Whenever one party gives notice to the other party concerning any of the provisions of this Agreement, such notice shall be given by certified mail, return receipt required. Said notice shall be deemed given when it is deposited in the United States mail with sufficient postage prepaid (notwithstanding that the return receipt is not subsequently received).

Notices shall be addressed as follows:

YORK COUNTY

York County Manager

P.O. Box 66

York, S.C. 29745

UTILITIES SERVICES OF SOUTH CAROLINA, INC.

2335 Sanders Road

Northbrook, IL. 60062

Attn: Mrs. Lisa Sparrow

President and C.E.O.

These addresses may be changed by giving notice as provided for in this paragraph.

2. No waiver of breach of any of the terms of this Agreement shall be construed to be a waiver of any succeeding breach.

3. Utility hereby indemnifies County from any liability arising out of the distribution and sale of the County supplied water through Utility's mains throughout the Water Service Area, provided that County furnishes potable water to the Utility, which meets all regulatory standards.

SECTION 6

DEFAULT

If either party materially fails or defaults in keeping, performing, or abiding by the terms and provisions of this Agreement, then the non-defaulting party shall give written notice to the defaulting party specifying the nature of the default. If the defaulting party does not cure the default within thirty (30) days after the date of written notice, then this Agreement, at the option of the non-defaulting party, shall terminate. Neither party shall be relieved of liability to the other for the damages sustained by virtue of any party wrongfully exercising this provision. This paragraph is not intended to replace any other legal or equitable remedies available to any non-defaulting party under South Carolina law, but it is in addition thereto. Notwithstanding the foregoing, any failure to make timely payments shall be considered a material default under these terms of this Agreement without the necessity for any written notice to Utility.

SECTION 7

TERM

This Agreement shall have a term of twenty (20) years commencing on the date of execution of this Agreement. This Agreement may thereafter be renewed for an additional period of ten (10) years if either party notifies the other party in writing of its desire to renew the Agreement at least six (6) months prior to expiration of the initial period, and other party does not object to such renewal in writing at least three (3) months prior to the expiration of the initial period." This Agreement shall not be considered an obligation on the part of the County to perform in any way other than as indicated in this Agreement. The County shall not be obligated under the terms of this Agreement to supply additional water for Utility to areas outside the

Water Service Area, unless the County Issues written notification that It does not object to such additional service.

SECTION 8

FORCE MAJEURE

1. If, by reason of force majeure, either party hereto shall be rendered unable, in whole or in part, to carry out its obligations under this Agreement, then, and in that event, said party shall give notice in writing, to the other party, within a reasonable time thereafter, giving the full particulars of such force majeure.

The obligations of the party so affected shall thereupon be suspended and suspension shall continue during the period in which such inability continues; provided, however, that the disabled party shall endeavor with all reasonable dispatch, to remove or overcome such inability. Provided further, however, that this Section 8 shall not apply to failures by County or Utility to make payments or credits for services rendered as specified under Section 2 entitled "Water Supply Service".

2. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of Commission and courts of this State, orders of any kind of the of the government of the United States of the State Carolina, or any military authority, insurrection, riots, epidemics, landslides, earthquakes, fires, storms, hurricanes, floods, wash-outs, droughts, arrests and restraints of government and people, civil disturbances, explosions, breakage or damage to machinery, canals, tunnels, or pipelines, partial or entire failure of water system, and inability of County to furnish water hereunder or Utility to receive water hereunder for any reason or cause not reasonably within the control of the party claiming such inability.

SECTION 9

MISCELLANEOUS PROVISIONS

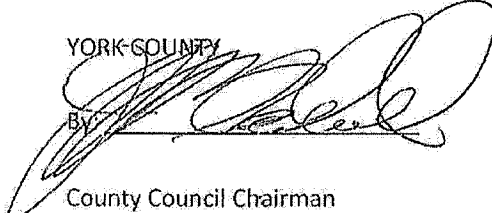
1. The parties hereto agree that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take other actions as may be reasonably required to carry out the intent of this Agreement.

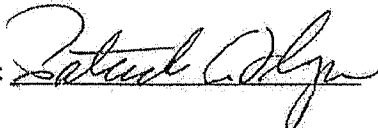
2. This Agreement shall be binding upon the heirs, representatives and assigns of the parties hereto and the provisions hereof shall constitute covenants running with the land for the benefit of the heirs, representatives and assigns of the party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the date first above written.

Attest: 

James E. Baker
County Manager

YORK-COUNTY
By: 
County Council Chairman

Attest: 

Utilities Services of South Carolina, Inc.
By: 